



New Jersey Civil Complementary Dispute Resolution Newsletter

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Enhancements of Arbitration Program Being Implemented

On May 29, 2003, with the approval of the Administrative Director and the Conference of Civil Presiding Judges, a statewide arbitration conference was held. The purpose of the conference was to promote greater statewide uniformity in the operation of the court-annexed arbitration programs and provide a forum to identify ways for further enhancement of these valuable programs. Invitees included the Conference of Civil Presiding Judges, Civil Division Managers, Arbitration Administrators, Chairs of County Arbitration Selection Committees, Chairs of County Bar Civil Practice Committees, the President and Executive Director of the New Jersey State Bar Association, representatives from various specialty bars and ATLA-NJ and TANJ and representatives from major insurance carriers who participate in the arbitration process. A total of 124 individuals attended the conference.

Based upon feedback from the conference, the Committee made the fol-

lowing recommendations, which were approved by the Conference of Civil Presiding Judges and Judicial Council for implementation:

- *Recommendation 1:* To ensure that all serving as arbitrators in the court-annexed arbitration programs have the same baseline knowledge and arbitrate in accordance with the uniform procedures approved by the Conference of Civil Presiding Judges and Judicial Council and to enhance the confidence of the bar and public, the Rules of Court should be amended to require at least three hours of threshold training in order to become an arbitrator as well as two hours of continuing training every two years. The mandatory training should be standard statewide. It should be developed and conducted by or under the oversight of the AOC's Civil Practice Division.

Although many individuals have served as arbitrators for numerous years, feedback from the conference indicated that arbitrators are not uniformly handling matters in accordance with the approved procedures manual. In fact, some individuals have learned and reinforced many poor practices, such as routinely rendering awards outside of the presence of the parties or referring to counsel by first names. Ongoing training should help to make arbitration hearings more uniform, and will help to reinforce approved practices.

- *Recommendation 2:* Arbitrators should be required to conduct hearings uniformly and in accordance with the approved arbitrators' procedures manual and each Civil Presiding Judge should enforce this. A checklist should be issued, covering each requirement that should be fulfilled by the arbitrator during the hearing.

Enhancements of Arbitration Program Being Implemented (continued)

In addition, to assist the Civil Presiding Judge in monitoring this, the evaluation forms given to litigants and attorneys participating in arbitration hearings should be revised to capture data eliciting whether hearings are being conducted in accordance with approved procedures.

- *Recommendation 3:* The Judiciary should have a biennial statewide conference to promote uniformity, discuss issues and develop a closer rapport with the state, county and specialty bars and the insurance community. Moreover, the Committee should meet annually with the local arbitration committee chairs.

Participants at the statewide conference were asked to complete evaluation forms. A review of the summary showed that participants overwhelmingly expressed an interest in future conferences. Anecdotal feedback also indicated that participants welcomed the opportunity to continue the dialogue commenced at the conference. The Committee noted that the conference appears to have precipitated significant productive activity by local bench/bar committees in an effort to improve local screening

of arbitrators and other aspects of the arbitration programs.

- *Recommendation 4:* The counties should be permitted via rule amendment the option of using two-person arbitrator panels and two-person panels should receive compensation at the rate of \$450 per day, to be split evenly.

Of all issues discussed at the conference, permitting counties the option of using two-person panels was without a doubt the one issue on which there was absolute consensus. It is clear that the use of two-person panels will in the counties that desire to use them will buttress the confidence of the bar, carriers and public in the program.

- *Recommendation 5:* A form should be used to routinely track settlement values of arbitrated cases that settle after a trial *de novo* request is filed. The form should also solicit information regarding the impact arbitration had in bringing about the settlement.

- *Recommendation 6:* The Committee, with the approval of the Conference of Civil Presid-

ing Judges, should begin regular meetings with insurance carriers in an effort to improve the program from their perspectives.

It became apparent from the conference that some major carriers have misconceptions regarding the program or have needs that, if known, could be effectively addressed without compromising the program.

- *Recommendation 7:* The CIS should be amended to identify Title 59 cases and these should be block-scheduled and assigned to arbitrators having specialized expertise.

Participants at the conference noted that some arbitrators were having difficulty in handling Title 59 cases and recommended that these cases be assigned only to individuals possessing the appropriate background.

- *Recommendation 8:* If arbitration adjournment requests are not handled by the pretrial or managing judge, each county should designate an arbitration judge to handle adjournments to ensure consistency.

Enhancement of Arbitration Program Being Implemented (continued)

Bar representatives complained that, in some counties, there was a lack of uniformity in the handling of requests to adjourn arbitration hearings.

•*Recommendation 9:* The automated arbitration notice should be revised to advise counsel to contact the court in the event that a particular case requires additional time for arbitration.

Some participants complained about being rushed at arbitrations and thought that in some cases additional time should be allotted for hearings. At present, any party, anticipating that the case will require a longer-than-usual arbitration hearing, need only call the arbitration administrator in advance to arrange for additional hearing time, but discussions at the conference revealed that this is not widely known.

•*Recommendation 10:* Each county bench/bar arbitration committee should be required to meet at least annually to review completed evaluation forms, deal with problems and work proactively to enhance the program.

• *Recommendation 11:* Every September, the issue of annual

arbitrator screening and filing of rosters should be placed on the agenda of the Conference of Civil Presiding Judges and counties reminded of this requirement. Moreover, the Civil Presiding Judges should address the issue with their respective Assignment Judges annually as to whether the Assignment Judge wants to be actively involved in the screening and reappointment process.

• *Recommendation 12:* R. 4:21A-1(c)(1) should be amended to provide that cases having undergone a prior, unsuccessful court-ordered mediation should not then be scheduled for arbitration unless the judge finds that there is good cause for the matter to be arbitrated or the parties request arbitration.

The Committee was concerned that it is unnecessarily burdensome to require parties to attend more than one court-ordered CDR event. However, members also recognized that in some instances the court may have a good reason for a particular case to go to arbitration even if mediation has failed.

• *Recommendation 13:* Arbitrators should be required to write brief findings of fact and conclusions of law. Moreover, arbitrators should

call the case on what they have before them and put the lack of a defense report or other lack of preparation in the statement of reasons in the report and award.

•*Recommendation 14:* Cases should be block-scheduled by insurance carrier, and it is recommended that adjustors attend the hearings.

At the conference, Mercer County participants described a very successful program operated in collaboration with Prudential Insurance Company in which adjustors attend and which has resulted in a drastic reduction in the trial *de novo* request rate for cases in which block-scheduling is used.

• *Recommendation 15:* Arbitrators should handle settlements in accordance with the Procedures Manual for Arbitrators in the Civil Arbitration Programs as revised.

Enhancements of Arbitration Program Being Implemented (continued)

Although arbitrators must remain objective and adjudicate the case and come to a decision without being influenced by or appear to be influenced by settlement discussions, if the parties come to the arbitrator and ask that arbitrator to serve as a settlor, rather than as an adjudicator, the arbitrator may serve in the capacity. If the matter does not settle, however, the arbitrator should not thereafter conduct an arbitration unless both the parties and the arbitrator feel comfortable with the arbitration being done.

- *Recommendation 16:* The arbitrators' procedures manual should be revised to incorporate the standards of conduct for arbitrators that were approved by the Supreme Court in May 2003.

- *Recommendation 17:* Arbitrators should be reminded that they must call a "no cause" when the case involves a "no cause" and provide full value when that is appropriate instead of "splitting the difference" or placing a settlement value on the case.

- *Recommendation 18:* R. 4:21A-3, which applies the offer of judgment rule to arbitration, should be eliminated.

The offer of judgment rule serves as a penalty and does not foster civility, does not have a positive impact in fostering settlement and therefore should be abolished within the context of the arbitration program.

- *Recommendation 19:* The Civil Presiding Judge should handle local complaints relating to arbitrators including alleged violations of the approved standards of conduct for arbitrators. If requested, the Committee can make appropriate recommendations to the Conference of Civil Presiding Judges as to the interpretation of a particular standard.

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